



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Bow School District

Petitioner

Bow Educational Support Staff, NEA-NH

Respondent

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CASE No. M-0713-1

DECISION No. 2001-123

### PRE-HEARING CONFERENCE MEMORANDUM AND ORDER

#### BACKGROUND

The Bow School District (hereinafter referred to as the "District") filed a Modification Petition with the Public Employee Labor Relations Board (PELRB) on October 15, 2001 seeking to remove the positions of "Kitchen Support Staff/Food Service Staff" from an existing bargaining unit.

The existing bargaining unit, entitled "Bow Educational Support Staff / NEA-NH/NEA" (hereinafter referred to as the "Association") filed its objection on October 22, 2001. Its relevant objection asserts that there is a self-felt community of interest in existence among all employees within the existing unit and that a community of interest exists, in fact, among the kitchen support staff/food service personnel and other members within the existing unit. The Association also makes a statement in its objection that there has been no change in circumstances since the unit was formed by mutual agreement in 1995.

At the Pre-Hearing Conference the Association indicated its intention to file a Motion to Dismiss that would, if granted, be dispositive of this matter. The representatives also raised an evidentiary issue involving an exchange of correspondence between Diane MacDougall an individual employed at the Bow Memorial School and Parker Denaco, Executive Director of the PELRB. Agency files were examined and a copy of the correspondence was provided to both representatives at the conclusion of the Pre-Hearing Conference. Lastly, the representatives informed the Hearing Officer that Motions for the Sequestration of Witnesses would be made at the time of any evidentiary

hearing. The Hearing Officer requested that counsel meet and confer to attempt to limit the number of witnesses necessary to a fair presentation of their respective cases and to plan the order of witnesses given the large number of witnesses presently planned to be called.

### PARTICIPATING REPRESENTATIVES

For the Board: Margaret-Ann Moran, Esquire

For the Association: Steven Sacks, Esq.

### ISSUES FOR DETERMINATION BY THE BOARD

The parties have stipulated that the following issues are the critical issues submitted for determination:

1. Whether the kitchen support staff/food service staff no longer have a community of interest with the other members of the existing bargaining unit.
2. Whether the composition of the bargaining unit should be modified to exclude the positions of kitchen support staff/food service from said unit.

### WITNESSES

For the Board (Petitioner):

1. Peter Chamberlin	Ralph Minichiello	Douglas S. Hatfield
Marie Greenly	Susanne Fournier	Patricia J. Carignan
Diane MacDougall	Becky Grant	Fran Ladd
Kathleen Bell	Nan Thorne	Lori Wolklin
Karen Ginquinta	Jo-Ann Lambert	Sharon Chaput
Diane L. Cooper	Maria Delmar Adebron	Nancy Dupuis

For the Association (Respondent)

1. W. B. Cumings, UniServe Director
2. Cathy Manley, former employee
3. Debbie Shaw, former employee
4. Marsha Stickney, former employee
5. Kathryn Lacroix, former employee

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order, or upon proper showing, later reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

### EXHIBITS

#### For the Board:

1. Petition of Bow Street District Food Service Staff to withdraw
2. Memorandum from Ann Brannock to Cafeteria Staff, dated October 9, 2000
3. W. B. Cummings' e-mail transmission, dated 6/7/01
4. BESS Petition to Exclude five (5) positions entitled "head cook", dated 7/11/01
5. Agreed to BESS Modification Petition to Exclude three (3) positions, dated 8/16/01
6. Agreed to BESS Modification Petition to Exclude three (3) positions, dated 9/10/01
7. Letter from Douglas S. Hatfield, Esq. to W. B. Cumings, dated 7/19/01
8. Letter from Parker Denaco to MacDougall, dated 5/21/01
9. Parties present collective bargaining agreement

#### For the Association:

1. Letter from Diane MacDougall to Mr. Buckley, dated May 16, 2001
2. Letter from Parker Denaco to Diane MacDougall, dated May 21, 2001

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is to be understood by the parties that each party may rely on the representations of the other that the exhibits listed above will be available at hearing.

### DECISION

1. The Association shall file its Motion to Dismiss on or before December 4, 2001.
2. The District shall file its Objection on or before December 18, 2001.
3. Both representatives indicated that it was their desire to submit affidavits at the time of hearing. As the credibility of such witnesses will be at issue, both representatives were reluctant to waive any right to cross examination they may have but were cooperative in attempting to address certain witness issues in advance. Specifically, any affidavit of a witness that a party will attempt to place into evidence shall be provided to the opposing party on or before December 14, 2001. Copies shall not be forwarded to the PELRB.
4. The parties have agreed to meet and confer in an attempt to come to an agreement on all facts believed necessary to form a record upon which a decision may be rendered on Issue #1, above. In the event that agreement can be reached, the parties have agreed that a Statement of Stipulated Facts shall be executed by both parties and submitted to the PELRB accompanied by each party's respective Memorandum of Law in support of their position on or before January 4, 2002.
5. A hearing is hereby scheduled to be conducted on January 9, 2001 beginning at 1:30 P. M. for the sole purpose of allowing each party to make oral argument in support of their respective position on the Motion to Dismiss. Thereafter, a decision shall issue on the motion.
6. In the event that the Motion to Dismiss is granted, the Modification Petition shall be dismissed and these proceedings shall cease. Otherwise, an evidentiary hearing on the merits, and if deemed necessary by the Hearing Officer, on the Motion to Dismiss, shall be conducted.
7. Not later than five (5) days before the scheduled date of the evidentiary hearing, as required by Rule Pub 203.01(b), the party representatives shall exchange their final Exhibit List and final Witness List indicating the purpose of each witness's testimony. At the same time, each shall deliver or a copy of their respective lists to the PELRB. The party representatives shall meet, or otherwise arrange, to pre-mark all exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.
8. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than fourteen (14) days prior to the scheduled date of the hearing as appears below.

Unless otherwise ordered as a result of the filing of any subsequent motion, an evidentiary hearing between the parties is scheduled to be conducted at the Office of the Public Employee Labor Relations Board on Tuesday, January 29, 2002 beginning at 9:30 A. M.

Signed this 28<sup>th</sup> day of November, 2001

A handwritten signature in cursive script, appearing to read "Donald E. Mitchell", written over a horizontal line.

Donald E. Mitchell, Esq.  
Hearings Officer